IN THE IOWA DISTRICT COURT, IN AND FOR BLACK HAWK COUNTY

DAVID DEIBLER, et al., Petitioner(s), vs THE IOWA BOARD OF REGENTS, Respondent.	LACV: CVCV118609 ADJUDICATION OF ADMINISTRATIVE APPEAL

On June 18, 2012, this matter was presented as an administrative appeal from agency action other than a decision in a contested case. Attorney Thomas P. Frerichs represented the petitioners. Deputy Attorney General Jeffrey S. Thompson represented the respondent.

Prior to trial the parties agreed that the court would hear and rule on the case before June 30, 2012. They also agreed that the petitioners' claims present issues of law and not of fact. The case was ultimately presented through legal argument only and no evidence was admitted.

Petitioners' Request for a Stay

The petitioners initially asked for a temporary stay order. The request was resisted by the respondent. The parties agree that the request is now moot. Based on the stipulation of the parties the matter is not addressed further.

Respondent's Motion to Dismiss

The respondent moved to dismiss the petition on the ground that it fails to state a claim on which relief can be granted. The motion is denied without addressing its merits. It is more appropriate to resolve the issues of the appeal in the context of a full resolution of the appeal.

Respondent's Objection and Motion to Strike

During the pretrial phase the parties argued over whether certain filings amounted to a factual submission. That dispute led the respondent to file an objection and a motion to strike. The parties have reaffirmed that the dispute presents issues of law, not fact. This being the case, the respondent's objection is overruled and the motion to strike is denied with the understanding that the court will disregard fact submissions from either party unless there is apparent agreement to the fact at issue.

In making this ruling everyone should be clear, the dispute over what the law is comes to the court in a factual context. That context will be described in the course of the decision. If either party believes the court overreaches in making factual findings they may raise the issue on further review and seek relief.

Background of the Dispute

The Iowa board of regents has operated the Malcolm Price laboratory school at the University of Northern Iowa (hereafter UNI) in Cedar Falls, Iowa, for a number of years. In 2009 the Iowa legislature passed Senate File 470. S.F. 470 (83rd G.A., 2009) (hereafter S.F. 470). Sections 49 to 57 of the bill concern a research and development school. These sections are codified, in part, as Iowa Code Chapter 256G.

On February 27, 2012, the Iowa board of regents closed the Malcolm Price laboratory school effective June 30, 2012. In the same motion the board president was authorized to notify the Iowa legislature and the governor of the board's actions.

The Iowa legislature was in session at the time of the closure decision by the board of regents. Legislation was introduced to earmark $3,000,000.00 for the Malcolm Price laboratory school. The appropriation was not adopted. Legislation was also introduced requiring the board of regents to operate and fund the Malcolm Price laboratory school through July 1, 2013. This legislation also failed to pass.

Statement of the Controversy

The petitioners contend that S.F. 470 as codified changes the essential character of the Malcolm Price laboratory school such that the Iowa board of regents no longer has discretion to close it pursuant to Iowa Code section 265.1. They ask that the court vacate the administrative action closing the school because the act was beyond the respondent's authority.

Conclusions of Law and Analysis

Administrative Appeal

This is an administrative appeal seeking review of other agency action pursuant to chapter 17A of the Iowa Code. The filing of the appeal does not stay the agency's ruling. The burden of persuasion is on the petitioners to demonstrate the invalidity of the respondent's action.

Statutory Interpretation

Resolution of the appeal requires analysis of Iowa law, including S.F. 470. The primary goal is to give effect to the intent of the legislature. In re Detention of Betsworth, 711 N.W.2d 280, 283 (Iowa 2006). Legislative intent is determined from the language of

the entire statute, not just from one part. Id. When the meaning of the statute is clear courts are not permitted to search for a meaning beyond the express terms. State v. Chang, 587 N.W.2d 459, 461 (Iowa 1998). "[W]ords are presumed to be used in their ordinary and usual sense and with the meaning commonly attributable to them." State v. Royer, 632 N.W.2d 905, 908 (Iowa 2001). It is necessary to look not only at the words of the statute but the purpose behind the statute. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 363 (Iowa 2000).

If a general statutory provision conflicts with a specific provision, they should be construed, if possible, so that effect is given to both. If that is not possible, the specific provision prevails as an exception to the general rule. Iowa Code § 4.7 (2011). If two statutes are irreconcilable, the most current prevails. Iowa Code § 4.8.

Laboratory Schools

The legislature has given the board of regents a wide range of responsibilities and broad authority to deal with them. See, e.g., Iowa Code § 262.9. As to laboratory schools specifically, chapter 265 of the Iowa Code is devoted to them exclusively. In the first section of the chapter the legislature authorized the board of regents to establish and operate elementary and secondary laboratory schools at the institutions of higher education under its control. Iowa Code § 265.1. The power to establish includes the power to abolish. See generally, Over the Road, City Transfer Drivers, Helpers, Dockmen & Warehousemen, Inside Workers, State, County, & Municipal Employees, Teamsters 147 v. Wapello County, 433 N.W.2d 723, 725 (Iowa 1988).

The question is not whether S.F. 470 grants the board of regents the authority to close the Malcolm Price laboratory school. The board already had that authority at the time S.F. 470 was adopted. The question is whether the act restricts the previously granted authority in such a way that the board lost its existing authority to close laboratory schools, most specifically, the Malcolm Price laboratory school.

The legislature vested the board of regents with authority to establish, and thereby, to disestablish, laboratory schools before it passed S.F. 470 in 2009. The legislature is attributed with knowledge of its prior act at the time it crafted and passed S.F. 470.

Senate File 470

Senate file 470 contains provisions that are unrelated to this controversy. The portions of S.F. 470 relevant to this matter are sections 49 to 57. The portion containing these sections is titled, "Research and Development School." The first section says that the legislative intent behind the bill is to develop a state prekindergarten through grade twelve school for several listed purposes. The word "develop" in ordinary usage

implicates a process that will occur gradually over time. Merriam-Webster.com (last visited June 21, 2012), http://www.merriam-webster.com/dictionary/.

The next section contains definitions and defines "research and development school" as a prekindergarten through grade twelve research, development, demonstration and dissemination school using expanded facilities at the center for early development education, also known as the Price laboratory school, in Cedar Falls. This is the only time the school is mentioned in the bill although laboratory schools are mentioned generally later in section 54 in the context of amending open enrollment provisions.

Section 56 of the bill appropriates $35,000 to contract with a design firm to evaluate the condition of the center for early development education and determine the approximate cost of both renovation of the current facility and construction of a new facility. The transition team for the project was required to report the design firm's findings and recommendations to the general assembly by January 15, 2012. S.F. 470 § 56.1(c). The parties agree that this was done and the legislature took no action on the report. The timeline for the report is consistent with the interpretation that the legislature created a process that would develop over time.

Section 56.3 explicitly creates a three-year timeline to establish the research and development school. It directs a transition team to develop and implement specific transition plans for the first year of the transition and for the entire three-year transition in order "to establish a functioning research and development school at the end of the transition period." S.F. 470 § 56.3. This language is also consistent with the interpretation that the bill created an ongoing process that would not culminate in the creation of a research and development school until the end of the three-year transition period.

The effective date of the portions of the act discussed here was July 1, 2009. S.F. 470 § 57. Applying that date to the transition period, the legislative directive was to establish a functioning research and development school as of July 1, 2012.

Although the petitioners assert otherwise, the language of the bill makes it clear that the legislature intended a development and transition process of three years and, at the end of that process, a research and development school would be established. The act does not purport to establish a research and development school before the entire three-year transition period has expired.

Analysis

According to the explicit language of S.F. 470, the research and development school envisioned by the act would not be established until July 1, 2012. Until that time the research and development school would be going through transitional phases of creation. Presumably, as the transition progressed, the school would become increasingly complete, until it finally became established. "Establish" means to institute

permanently or to bring into existence. Merriam-Webster.com (last visited June 21, 2012), http://www.merriam-webster.com/dictionary/.

There is no explicit language in S.F. 470 discussing in anyway the prior authority vested in the board of regents by the legislature to establish or abolish laboratory schools. The legislature knew how to prevent the closure of the laboratory school if that was its will. See, e.g., Iowa Code § 270.10.

The petitioners argue that S.F. 470 legislatively established a research and development school and extended no discretion to the board of regents to abolish what it had created. That interpretation is not supported by the language of the act. The most the legislature did was to initiate a three-year transition process that would culminate in a research and development school on July 1, 2012. It is unnecessary to consider whether S.F. 470 vested the board of regents with authority to abolish an established research and development school because, at the time of the board's action on February 27, 2012, there was no research and development school. What existed, as a matter of law, was a laboratory school in transition.

The petitioners assert that the research and development school did exist because the transition process included hiring teachers, budgeting and other acts conducted in the name of the research and development school. Such acts are consistent with the legislature's goal of a gradual process bringing the school into existence. Acts in compliance with the development process cannot overcome the plain language of the act that the research and development school was not established until the end of the entire three-year transition.

It is unnecessary to consider whether the board of regents had the authority to abolish a research and development school once it was established. At the time of its action, the board had the authority to close a laboratory school and it limited its decision to that purpose. The research and development school did not exist and S.F. 470 provides no basis for interfering with the exercise of the board's discretion in closing the Malcolm Price laboratory school.

At this point the analysis is complete relying only on the plain language of the relevant statutes. However, the conclusion reached is buttressed by subsequent events. The petitioners assert in argument that the Price laboratory school and the research and development school were funded out of the legislature's general appropriation for UNI. While the court cannot find that to be a fact, the assertion is accepted as accurate. It would explain the attempt by legislators, when presented with the closure decision of the respondent, to earmark three million dollars for the continued operation of the Malcolm Price laboratory school. The general assembly's rejection of the effort to earmark funds for the school indicates its desire to rely on the board of regents and UNI administration to appropriately prioritize spending at the university. See H.F. 2465 and S.F. 5236 (84th G.A. 2012).

The general assembly also chose not to intervene by requiring the board of regents to keep the school open, a process the legislature is known to be familiar with. As with earmarked funding, an attempt was made to pass such legislation and it failed. See S. 5251, H. 8513 and H.F. 2465 (84th G.A. 2012). The legislature's failure to intervene following the announcement of the closure decision demonstrates that it was content to accept the board's authority to close the laboratory school.

Judgment

The administrative action of the Board of Regents closing the Malcolm Price Laboratory School is affirmed. The petitioners' appeal of the board's administrative action closing the laboratory school is dismissed at the petitioners' cost.

DONE AND ORDERED: June 22, 2012

Alan L. Pearson
Senior Judge

Copy hereof mailed or delivered to
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6/25/12